

## **REMARKS**

### **Summary of Office Action**

Claims 1-10 and 15-22 are pending. Claims 11-14 have been previously cancelled. In the Office Action mailed November 3, 2009, the Examiner made the previous restriction final and withdrew claims 7-10 from consideration. The Examiner next objected to the drawings and the specification. The Examiner rejected claims 15-19, 21 and 22 under 35 U.S.C. §112, first paragraph and claims 20-22 under 35 U.S.C. §112, second paragraph. With respect to the prior art, the Examiner maintains that claims 1-6 and 15-22 are anticipated by WO 00/61344 (corresponding with Jordan et al. U.S. Patent 6,808,384). For the reasons set forth herein, Applicant believes the pending application is in condition for allowance.

### **Objection to the Drawings**

The Examiner objected to the drawings as including German text rather than English text labels. Applicant has enclosed herewith three (3) sheets of replacement formal drawings that overcome the objection to the drawings. No new matter has been added. Accordingly, Applicant requests that the objection to the drawings be withdrawn.

### **Objection to the Specification**

The Examiner objected to the specification for referring to the claims outside the claims themselves. Applicant has amended two paragraphs of the specification to resolve the extraneous reference to the claims. Accordingly, Applicant requests that the objection to the Specification be withdrawn.

### §112 Rejections

The Examiner rejected claims 15-19, 21 and 22 under 35 U.S.C. §112, first paragraph asserting that reciting the “operating state change device” and the “automatic operation switch” as distinct elements constitutes new matter. Applicant has amended claims 15-19 and 21-22 to clarify that which is called for therein. As amended, these claims clarify the relationship of the operating state change device and the structures or means defined in the claims that depend therefrom. As amended, Applicant believes claims 15-19, 21 and 22 are consistent with respect to the as-filed application and do not include any new matter. Therefore, Applicant believes that this rejection has been overcome.

The Examiner also rejected claims 20 and 22 under 35 U.S.C. §112, second paragraph as being indefinite stating that, “It is unclear what the corresponding structure [is] for the limitation ‘operating state change means for ....’” As stated at page 7, line 26 to page 8, line 2 of the specification, it is not essential that all three respective switches 8, 9, 10 be present in any particular embodiment of the invention. Page 7, lines 20-21 of the specification further discloses that operating panel 6-2 associated with switch housing 6-1 is provided with an automatic operation switch 9 for switching on automatic liberation operating mode. In accordance with such disclosure, those skilled in the art would appreciate that, if bottle 1 were only configured for operation in liberation operating mode, any one of switch housing 6-1, operating panel 6-2, rotation direction switch 8, automatic operating switch 9, or period duration switch 10, as structures that correspond to the operating state change means for automatically reversing the direction of the electric motor. Claims 21 and 22 have been further amended to further clarify

such understanding. Accordingly, Applicant believes that claims 20-22, as presented herein, satisfy the requirements of 35 U.S.C. §112, second paragraph. Therefore, Applicant requests that the rejection under 35 U.S.C. §112, second paragraph be withdrawn.

### **Prior Art Rejections**

The Examiner rejected claims 1-6 and 15-22 under 35 U.S.C. §102(b) as being anticipated by WO 00/61344, corresponding to Jordan et al. U.S. Patent 6,808,384, asserting that "Jordan discloses a device comprising an electric motor (4); a vibrator housing (1); a rotatable imbalance device (8); and a main switch (see col. 4, line 54)." The Examiner further asserts that "No other structural elements are positively recited as required elements of the claimed structure." Applicant respectfully disagrees.

The Examiner summarily dismisses over half of the last clause of claim 1, asserting that "independent claim 1 makes clear that the operating state change device is not one of the elements which the claimed vibrator device is required to comprise, but instead explains that operating stage change device is something 'by which the internal vibrator device is able to be operated.'" Such an assertion unlawfully omits consideration of each and every limitation called in the claim and is both unreasonable and inaccurate.

The relevant portion of claim 1 actually recites "an operating state change device by which the internal vibrator device is able to be operated in a liberation operating state...." That is, it is not the operating state change device that is "optional" but the language of claim 1 defines that the mode of operation of the vibrating device may be varied by the operating state change device. Contrary to the Examiner's interpretation, the operating state change device called for in

claim 1 is not an "optional" element of the claim but it is minimally configured to allow operation of the vibrator device in a liberation operating state. Claim 1 goes on to further define that the operating state change device automatically reverses the direction of rotation of the electric motor at periodic time intervals when operated in the liberation operating state. Such an operating state change device is not disclosed or even remotely suggested by Jordan et al.

Independent claim 17 also calls for an operating state change device that automatically reverses the direction of the electric motor at periodic time intervals to operate the vibrator device in a liberation operation state. Independent claim 20 calls for operating state change means for automatically reversing the direction of the electric motor at periodic time intervals to operate the internal vibrator device in a liberation operating state. Even withdrawn independent claim 7 calls for a method freeing a jammed vibrator device that includes automatically periodically operating an electric motor in a liberation operating state in which the rotational characteristic of the electric motor differs from the rotational characteristic in the normal operating state when an operator activates the liberation operating state. Each of the independent claims recites some structure that automatically reverses a direction of operation of the vibrator device. Contrary to the Examiner's assertion that the device of Jordan et al. inherently includes the structure to facilitate such operation, Jordan et al. cannot operate as recited in the pending claims.

In rejecting Applicant's previous arguments, the Examiner quotes from *Swinehart*, 429 F.2d at 213, stating "Where the Patent Office has reason to believe that a functional limitation asserted to be critical for establishing novelty in the claimed subject matter may, in fact, be an inherent characteristic of the prior art, it possesses the authority to require applicant to prove that

the subject matter shown to be in the prior art does not possess the characteristic relied on.”

Applicant has enclosed herewith a §132 Declaration from Inventor Mr. Michael Steffen. The Declaration conclusively establishes that the claimed features are not inherent in Jordan et al.

That is, Jordan et al. does not disclose, expressly or inherently, or remotely suggest, a vibrator device having an operating state change device or operating state change means that is capable of automatically reversing the direction of operation of the vibrator device as is called for in the pending claims.

The Examiner uses the silence of Jordan et al. regarding the switched nature of the operation of the exciter assembly other than at column 4, lines 44-56 to conclude that the frequency switch arrangement is inherently capable of automatically reversing the direction of operation of the exciter. Such a conclusion is not supported in any manner by a reasoned and considered analysis of the disclosure of Jordan et al. As evidenced in the enclosed Declaration, those skilled in the art readily appreciate that operating the device of Jordan et al. in the manner asserted by the Examiner would result in device of Jordan et al. being unusable for its intended purpose if not the premature destruction of the same.

Unlike Jordan et al., the present invention is directed to resolving jamming of the exciter of the vibrator assembly by *periodically* and *automatically* reversing the operation of the motor. Each of the pending independent claims explicitly recites that the periodic and automatic reversal is performed by an operating state change device or operating state means. There is no disclosure or suggestion in Jordan et al. that the vibrator assembly disclosed therein include any structure that facilitates automatic reversal of the exciter operation at periodic time intervals as is

called for in the pending claims. Accordingly, Applicant believes claims 1-6 and 15-22 are patentably distinct thereover.

### CONCLUSION

It is believed that each of the Examiner's rejections has been addressed and overcome, and allowance of each of pending claims 1-6 and 15-22 is respectfully requested.

No fees are believed to be payable with the submission of this response. Nevertheless, should the Examiner consider any fees to be payable in conjunction with this or any future communication, the Director is authorized to direct payment of such fees, or credit any overpayment, to Deposit Account No. 50-1170.

The Examiner is invited to contact the undersigned by telephone if such would help expedite prosecution of this application.

Respectfully submitted,



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